

STATE OF NEW MEXICO
WATER QUALITY CONTROL COMMISSION



IN THE MATTER OF PROPOSED
AMENDMENTS TO 20.6.2,
THE COPPER MINE RULE,

No. WQCC 12-01(R)

New Mexico Environment Department,
Petitioner.

**FREEPORT'S RESPONSE TO AMIGOS BRAVOS'
MOTION TO POSTPONE HEARING**

Freeport-McMoRan Chino Mines Company, Freeport-McMoRan Tyrone Inc. and Freeport-McMoRan Cobre Mining Company (collectively "Freeport") hereby respond to Amigos Bravos' Motion to Postpone the Hearing as filed on January 11, 2013. Freeport opposes this motion and requests that the hearing proceed as currently scheduled to begin on April 9, 2013, in accordance with the Procedural Order.

As the Commission will recall, the Environment Department originally asked for the hearing on the Proposed Rules to begin on January 8, 2013. Freeport supported the Department's request. At the request of Amigos Bravos and other parties, the Commission decided to begin the hearing at a later date and set the hearing to begin on April 9, 2013.

Amigos Bravos, in its motion, does not assert that it does not have sufficient time to comply with the deadlines set forth in the Procedural Order or to prepare for the hearing set to begin on April 9. Amigos Bravos did not object to the schedule established by the Procedural Order or the scheduling of the hearing on April 9.

Instead, Amigos Bravos asks that the hearing be postponed because, under the current schedule, the Commission will hear the dispositive motions on April 9 and then, if the motions are denied, will proceed forthwith to hear the evidence regarding the Proposed Rules. Amigos

Bravos complains that, if the motions are granted and the Commission does not decide to hear the evidence on the Proposed Rules, Amigos Bravos will have wasted resources preparing for the hearing.

Amigos Bravos already has devoted substantial resources to this matter by participating in the Advisory Committee, including representation by a technical expert. Consequently, Amigos Bravos' positions should be well-established by now. Moreover, even in the event that the dispositive motions are granted and the Commission does not proceed with the evidentiary hearing, Amigos Bravos' preparation for the hearing can be used both for any further proceedings before the Department, which Amigos Bravos seeks through its dispositive motion, and for a future hearing before the Commission. Consequently any prejudice to Amigos Bravos by sticking to the current schedule is minor.

Amigos Bravos further claims that a delay would not prejudice Freeport. As the Commission is aware, one of Freeport's mines, the Tyrone Mine, has entered into a settlement with the Environment Department which requires a number of administrative actions to be completed by the end of 2013, one of which is the Commission's adoption of rules for the copper industry. If the Commission delays a hearing on the Proposed Rules to begin in June, considering the time it may take to complete the hearing and post-hearing procedures, a decision on the Proposed Rules could be delayed until near the end of 2013. Moreover, the Department's already thin resources will continue to be devoted in part to the Proposed Rules, and both the Department and the Commission will have less time to address the other matters required to be completed by the Tyrone Settlement. Consequently, Freeport will be prejudiced by a postponement of the hearing on the Proposed Rules. Amigos Bravos' motion does not address the potential prejudice to the Department.

Because Amigos Bravos' motion does not claim that it lacks the time to fully prepare for a hearing to begin on April 9 or to comply with the schedule in the Procedural Order, Amigos Bravos has no valid claim that it would not have a reasonable opportunity to submit data, views or arguments and to otherwise participate in the hearing as provided by NMSA 1978, Section 74-6-6.D. For the foregoing reasons, Freeport urges the denial of Amigos Bravos' motion.

Respectfully Submitted,

GALLAGHER & KENNEDY, P.A.



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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing pleading was mailed to the following parties this January 28, 2013:

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